

CALIFORNIA CRIME CHART: PERJURY, FORGERY, FRAUD
 Managed by the Los Angeles Immigration Court AAs/JLCs; last edited by Dani Gies on April 2, 2019
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Cal. Penal Code § 32 (Accessory to a Felony): Every person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony (2018).			
Maximum Sentence: Except where otherwise prescribed, 3 years imprisonment in state prison pursuant to CPC § 1170(h), or 1 year in county jail pursuant to CPC § 33.			
Aggravated Felony?	Crime Involving Moral Turpitude (CIMT)?	Particularly Serious Crime (PSC)?	Other Inadmissibility or Removability Grounds? i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
Obstruction of Justice: § 237(a)(2)(A)(iii)/ § 101(a)(43)(S)	§ 212(a)(2)(A)(i)(I); § 237(a)(2)(A)(i)	§ 208(b)(2)(A)(ii); § 241(b)(3)(B)(ii)	
<u>OBSTRUCTION OF JUSTICE: YES.</u> <u>Categorical Match?</u> Yes <i>Matter of Valenzuela Gallardo</i> , 27 I&N Dec. 449, 460–61 (BIA 2018), <i>clarifying Matter of Valenzuela Gallardo</i> , 25 I&N Dec. 838 (BIA 2012) (holding that a conviction under CPC § 32 that results in a term of imprisonment of at least one year is an aggravated felony relating to obstruction of justice).	<u>CIMT: IT DEPENDS. APPLY MODIFIED CATEGORICAL ANALYSIS.</u> <u>Categorical Match?</u> No <i>Navarro-Lopez v. Gonzales</i> , 503 F.3d 1063, 1074 (9th Cir. 2007) (en banc), <i>overruled on other grounds by United States v. Aguila-Montes de Oca</i> , 655 F.3d 915 (9th Cir. 2011), <i>abrogated by Descamps v. United States</i> , 570 U.S. 254 (2013) (explaining that if the principal offense is not a CIMT, then CPC § 32 is overbroad and categorically not a CIMT). <i>But see Matter of Rivens</i> , 25 I&N Dec. 623, 628–29 (BIA 2011) (reasoning, without holding, that “In our view, <i>Navarro-Lopez</i> is reasonably read only as finding that the California accessory after the fact conviction in that case was not for a [CIMT] because the underlying offense was itself not a [CIMT].”). <u>Divisible?</u> No published Ninth Circuit or Board case on point	<u>PSC:</u> For purposes of asylum: Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”). For purposes of withholding: Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious	

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	Proceed to Modified Categorical? No published Ninth Circuit or Board case on point	crime.”). Under <i>Matter of Frentescu</i> , 18 I&N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT	
Unpublished Cases:			
Relevant to Analysis:			
WOBBLER: YES. The maximum possible sentence for a “wobbler” offense depends on if it is classified as a misdemeanor or a felony. <i>See Garcia-Lopez v. Ashcroft</i> , 334 F.3d 840, 844 (9th Cir. 2003), <i>overruled on other grounds by Ceron v. Holder</i> , 747 F.3d 773, 777 (9th Cir. 2014) (en banc). A “wobbler” is “presumptively a felony and remains a felony except when the discretion is actually exercised to make the crime a misdemeanor.” <i>See Arellano Hernandez v. Lynch</i> , 831 F.3d 1127, 1132 (9th Cir. 2016) (quoting <i>Ewing v. California</i> , 538 U.S. 11, 16 (2003)). <u>Be aware</u> of CPC § 18.5 if the respondent was convicted of a misdemeanor.	Be aware of Cal. Penal Code § 18.5: CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> <i>See Matter of Velasquez-Rios</i> , 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart. Note: This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT, nor whether the offense meets any minimum sentence requirement.	Under <i>Mairena v. Barr</i> , 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.	

Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?
CPC § 115(a): Procuring or Offering False or Forged Instrument for Record Every person who knowingly procures or offers any false or forged instruments to be filled, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.			
Aggravated Felony: Fraud Offense 237(a)(2)(A)(iii)/ 101(a)(43)(M)(i)	CPC §§ 115(a); 17: 1 or 3 years (<i>see</i> CPC § 1170(h)).	(b) (5)	

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Be aware of Cal. Penal Code § 18.5: CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction. See *Matter of Velasquez-Rios*, 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.

Note: This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT, nor whether the offense meets any minimum sentence requirement.

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		(b) (5)	
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Cal. Penal Code § 118 (Perjury): (a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury. This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California. (b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence. (2018).

Maximum Sentence: 4 years. CPC § 126.

Aggravated Felony?	Crime Involving Moral Turpitude (CIMT)?	Particularly Serious Crime (PSC)?	Other Inadmissibility or Removability Grounds?
			i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
Perjury: § 237(a)(2)(A)(iii)/ § 101(a)(43)(S)	§ 212(a)(2)(A)(i)(I); § 237(a)(2)(A)(i)	§ 208(b)(2)(A)(ii); § 241(b)(3)(B)(ii)	
PERJURY: YES. <u>Categorical Match?</u> Yes A violation of § 118(a) is <u>categorically</u> an offense relating to perjury under INA § 101(a)(43)(S). <i>Matter of Alvarado</i> , 26 I&N Dec. 895, 902 (BIA 2016) (“Because a person who violates § 118(a) must make a	CIMT: IT DEPENDS. APPLY MODIFIED CATEGORICAL ANALYSIS. <u>Categorical Match?</u> No <i>Rivera v. Lynch</i> , 816 F.3d 1064, 1078 (9th Cir. 2016) (holding § 118 “goes well beyond common law perjury” and “categorically involves neither fraud nor grave acts of baseness or depravity.”).	PSC: For purposes of asylum: Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to	

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<p>material false statement knowing or willfully while under oath or affirmation where an oath is authorized or required by law, the elements of the respondent's state statute of conviction match those of the generic definition of perjury.").</p>	<p><u>Divisible?</u> Yes</p> <p><i>Rivera v. Lynch</i>, 816 F.3d at 1078–79 (finding § 118 is divisible because oral and written perjury under the statute are two separate offenses).</p> <p><u>Proceed to Modified Categorical?</u> Yes</p> <p><i>Rivera v. Lynch</i>, 816 F.3d at 1080 (applying the modified categorical approach and concluding that <u>written</u> perjury is not a CIMT).</p>	<p>have been convicted of a particularly serious crime.").</p> <p>For purposes of withholding: Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) ("[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.").</p> <p>Under <i>Matter of Frentescu</i>, 18 I&N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</p>	
Unpublished Cases:			
Relevant to Analysis:			
	<p>Be aware of Cal. Penal Code § 18.5: CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction.</u> <i>See Matter of Velasquez-Rios</i>, 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</p> <p>Note: This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT, nor whether the offense meets any minimum sentence requirement.</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the "aggregate term of imprisonment" to determine whether a conviction constitutes a per se particularly serious crime.</p>	

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Cal. Penal Code § 350(a) (Counterfeit of Registered Mark): Any person who willfully manufactures, intentionally sells, or knowingly possesses for sale any counterfeit mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark Office, shall, upon conviction, shall be punishable. (2018).			
Maximum Sentence: 4 years if directly and foreseeably caused death or great bodily injury to another. CPC § 350(a)(2)(C). 3 years upon subsequent conviction. CPC § 350(a)(2)(b). Except where otherwise prescribed, 1 year. CPC § 350(a)(1).			
Aggravated Felony?	Crime Involving Moral Turpitude (CIMT)?	Particularly Serious Crime (PSC)?	Other Inadmissibility or Removability Grounds?
Counterfeiting: § 237(a)(2)(A)(iii)/ § 101(a)(43)(R) Fraud: § 237(a)(2)(A)(iii)/ § 101(a)(43)(M)	§ 212(a)(2)(A)(i)(I); § 237(a)(2)(A)(i)	§ 208(b)(2)(A)(ii)/ § 241(b)(3)(B)(ii)]	i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
<p><u>COUNTERFEITING: YES.</u></p> <p><u>Categorical Match?</u> Yes</p> <p>A violation of § 350(a) is <u>categorically</u> a counterfeiting offense. <i>Rodriguez-Valencia v. Holder</i>, 652 F.3d 1157, 1160 (9th Cir. 2011).</p> <p><u>FRAUD: IT DEPENDS. APPLY CIRCUMSTANCE-SPECIFIC APPROACH.</u></p> <p><u>Categorical Match?</u> Yes, <u>but</u> only if the loss to the victim(s) exceeds \$10,000. Apply circumstance-specific approach.</p> <p>A violation of § 350(a) is <u>categorically</u> a fraud offense because it has been found to be “inherently fraudulent” and thus implicitly includes an intent to defraud. <i>Rodriguez-Valencia v. Holder</i>, 652</p>	<p><u>CIMT: YES.</u></p> <p><u>Categorical Match?</u> Yes</p> <p><i>Rodriguez-Valencia v. Holder</i>, 652 F.3d 1157, 1160 (9th Cir. 2011) (citing <i>Tall v. Mukasey</i>, 517 F.3d 1115, 1117–20 (9th Cir. 2008)) (finding that CPC § 350(a) “is an inherently fraudulent crime” “because ‘[t]he commission of the crime necessarily defrauds the owner of the mark, or an innocent purchaser of the counterfeit items, or both’”); <i>see also Wang v. Rodriguez</i>, 830 F.3d 958, 963–64 (9th Cir. 2016) (confirming that its holding regarding 18 U.S.C. § 2320(a) does not disturb <i>Tall</i>’s finding that § 350(a) is categorically a CIMT because it is an inherently fraudulent crime).</p> <p><i>See also Matter of Cortez Canales</i>, 25 I&N Dec. 301 (BIA 2010),</p>	<p><u>PSC:</u></p> <p>For purposes of asylum: Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”).</p> <p>For purposes of withholding: Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of</p>	

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<p>F.3d 1157, 1160 (9th Cir. 2011); <i>see also</i> INA § 101(a)(43)(M); <i>Kharana v. Gonzales</i>, 487 F.3d 1280, 1280 (9th Cir. 2007), <i>recognized as overruled on other grounds by Kawashima v. Mukasey</i>, 530 F.3d 1111, 1116 (9th Cir. 2008) (The definition of the generic “fraud offense” for the purposes of an aggravated felony under INA § 101(a)(43)(M) is “[1] the offense ‘involves fraud or deceit,’ and [2] the loss to the victim or victims exceeds \$10,000”); <i>Matter of Babaisakov</i>, 24 I&N Dec. 306 (BIA 2007) (same).</p> <p>In <i>Nijhawan v. Holder</i>, 557 U.S. 29 (2009), the Supreme Court stated that the “fraud and deceit provision” requires a “circumstance-specific” and not a “categorical” interpretation, to determine whether the loss to the victim exceeds \$10,000. <i>See id.</i> at 36, 38–40. Thus, while a violation of § 350(a) requires an intent to defraud, it is not a “categorical match” if the loss to the victim does not exceed \$10,000. <i>See also Matter of Babaisakov</i>, 24 I&N Dec. at 322 (holding that “[INA § 101(a)(43)(M)(i)] demands two types of determinations. The first is a categorical inquiry into a conviction under a criminal statute with an element of fraud or deceit. The second is an ordinary evidentiary inquiry into whether the loss associated with the fraudulent conduct encompassed by the conviction exceeds \$10,000.” When determining whether the loss to the victim exceeds \$10,000, the determination “may be proved by evidence outside the record of conviction.”).</p>	<p><i>abrogated on other grounds by Lozano-Arredondo v. Sessions</i>, 866 F.3d 1082 (9th Cir. 2017) (stating an offense is a CIMT if the statute has “intent to defraud” as an element); <i>McNaughton v. INS</i>, 612 F.2d 457, 459 (9th Cir. 1980) (stating that “[a] crime having as an element the intent to defraud clearly is one involving moral turpitude”).</p>	<p>imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p>Under <i>Matter of Frentescu</i>, 18 I&N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</p>	
Unpublished Cases:			
	<p><i>Hernandez v. Sessions</i>, 712 F. App’x 712, 712 (9th Cir. 2018) (unpublished) (“The agency did not err in determining that [respondent’s] conviction[] under California Penal Code []§ 350(a)(1) [is a] crime involving moral turpitude.”).</p>		
Relevant to Analysis:			
<p>WOBBLER: YES.</p> <p>The maximum possible sentence for a “wobbler” offense depends on if it is classified as a misdemeanor or a felony. <i>See Garcia-Lopez v. Ashcroft</i>, 334 F.3d 840, 844 (9th Cir. 2003), <i>overruled on other grounds by Ceron v. Holder</i>, 747 F.3d 773, 777 (9th Cir. 2014) (en banc). A “wobbler” is “presumptively a felony and remains a felony except when the discretion is actually exercised to make the crime a misdemeanor.” <i>See Arellano Hernandez v. Lynch</i>,</p>	<p>Be aware of Cal. Penal Code § 18.5: CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> <i>See Matter of Velasquez-Rios</i>, 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.</p>	

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831 F.3d 1127, 1132 (9th Cir. 2016) (quoting <i>Ewing v. California</i> , 538 U.S. 11, 16 (2003)). <u>Be aware</u> of CPC § 18.5 if the respondent was convicted of a misdemeanor.	Note: This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT, nor whether the offense meets any minimum sentence requirement.		
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Cal. Penal Code § 470 (Forgery; Signatures or Seals; Corruption of Records): (a) Every person who, with the intent to defraud, knowing that he or she has no authority to do so, signs the name of another person or of a fictitious person to any of the items listed in subdivision (d) is guilty of forgery.
(b) Every person who, with the intent to defraud, counterfeits or forges the seal or handwriting of another is guilty of forgery.
(c) Every person who, with the intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery.
(d) Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery: any check, bond, bank bill, or note, cashier's check, traveler's check, money order, post note, draft, any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, receipt for money or goods, bill of exchange, promissory note, order, or any assignment of any bond, writing obligatory, or other contract for money or other property, contract, due bill for payment of money or property, receipt for money or property, passage ticket, lottery ticket or share purporting to be issued under the California State Lottery Act of 1984, trading stamp, power of attorney, certificate of ownership or other document evidencing ownership of a vehicle or undocumented vessel, or any certificate of any share, right, or interest in the stock of any corporation or association, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release or discharge of any debt, account, suit, action, demand, or any other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or falsifies the acknowledgment of any notary public, or any notary public who issues an acknowledgment knowing it to be false; or any matter described in subdivision (b). (2018).

Maximum Sentence: 3 years imprisonment in state prison pursuant to CPC § 1170(h), or 1 year in county jail pursuant to CPC § 473.

Aggravated Felony?	Crime Involving Moral Turpitude (CIMT)?	Particularly Serious Crime (PSC)?	Other Inadmissibility or Removability Grounds? i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
Fraud: § 237(a)(2)(A)(iii)/ § 101(a)(43)(M) Forgery: § 237(a)(2)(A)(iii)/ § 101(a)(43)(R)	§ 212(a)(2)(A)(i)(I); § 237(a)(2)(A)(i)	§ 208(b)(2)(A)(ii)/ § 241(b)(3)(B)(ii)	
FRAUD: IT DEPENDS. APPLY CIRCUMSTANCE-SPECIFIC APPROACH. <u>Categorical Match?</u> Yes, <u>but</u> only if the loss to the victim(s) exceeds \$10,000. Apply circumstance-specific approach.	CIMT: YES. <u>Categorical Match?</u> Yes A violation of § 470 is <u>categorically</u> a CIMT because an element of the statute is intent to defraud. <i>See Matter of Cortez Canales</i> , 25	PSC: For purposes of asylum: Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA	

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<p>A violation of § 470 is <u>categorically</u> an offense involving fraud because conviction requires intent to defraud. <i>See</i> INA § 101(a)(43)(M); <i>Kharana v. Gonzales</i>, 487 F.3d 1280, 1280 (9th Cir. 2007), <i>recognized as overruled on other grounds by Kawashima v. Mukasey</i>, 530 F.3d 1111, 1116 (9th Cir. 2008) (The definition of the generic “fraud offense” for the purposes of an aggravated felony under INA § 101(a)(43)(M) is “[1] the offense ‘involves fraud or deceit,’ and [2] the loss to the victim or victims exceeds \$10,000”); <i>Matter of Babaisakov</i>, 24 I&N Dec. 306 (BIA 2007) (same).</p> <p>In <i>Nijhawan v. Holder</i>, 557 U.S. 29 (2009), the Supreme Court stated that the “fraud and deceit provision” requires a “circumstance-specific” and not a “categorical” interpretation, to determine whether the loss to the victim exceeds \$10,000. <i>See id.</i> at 36, 38–40. Thus, while a violation of § 470 requires an intent to defraud, it is not a “categorical match” if the loss to the victim does not exceed \$10,000. <i>See also Matter of Babaisakov</i>, 24 I&N Dec. at 322 (holding that “[INA § 101(a)(43)(M)(i)] demands two types of determinations. The first is a categorical inquiry into a conviction under a criminal statute with an element of fraud or deceit. The second is an ordinary evidentiary inquiry into whether the loss associated with the fraudulent conduct encompassed by the conviction exceeds \$10,000.” When determining whether the loss to the victim exceeds \$10,000, the determination “may be proved by evidence outside the record of conviction.”).</p> <p><u>FORGERY: YES.</u></p> <p><u>Categorical Match?</u> Yes</p> <p>A violation of § 470 is <u>categorically</u> an offense involving forgery because conviction requires fraudulent intent. <i>See Morales-Alegria v. Gonzales</i>, 449 F.3d 1051, 1056–58 (9th Cir. 2006) (holding § 476 is a forgery offense because the <i>mens rea</i> requirement of intent to defraud encompasses knowledge of the fictitious nature of the instrument); <i>see also Vizcarra-Ayala v. Mukasey</i>, 514 F.3d 870, 874 (9th Cir. 2008) (explaining that the generic crime of forgery requires “(1) a false making of some instrument in writing; (2) a fraudulent intent; [and] (3) an instrument apparently capable of effecting a fraud.”).</p>	<p>I&N Dec. 301 (BIA 2010), <i>abrogated on other grounds by Lozano-Arredondo v. Sessions</i>, 866 F.3d 1082 (9th Cir. 2017) (stating an offense is a CIMT if the statute has “intent to defraud” as an element); <i>McNaughton v. INS</i>, 612 F.2d 457, 459 (9th Cir. 1980) (stating that “[a] crime having as an element the intent to defraud clearly is one involving moral turpitude”).</p>	<p>§ 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”).</p> <p>For purposes of withholding: Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p>Under <i>Matter of Frentescu</i>, 18 I&N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</p>
Unpublished Cases:		

CALIFORNIA CRIME CHART: PERJURY, FORGERY, FRAUD

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<p>FRAUD: <i>Bhatt v. Holder</i>, 554 F. App'x 673, 673 (9th Cir. 2014) (unpublished) (“The BIA did not err in finding that Bhatt’s conviction for forgery under California Penal Code § 470(b) was an aggravated felony because it was an offense involving ‘fraud or deceit in which the loss to the victim ... exceeds \$10,000.’”); <i>see also</i> (b) (6) (BIA May 11, 2016) (unpublished) (affirming the IJ’s decision, finding the respondent’s forgery conviction under CPC § 470(d) involved fraud or deceit, but that DHS failed to meet its burden to show a loss to the victims exceeding \$10,000).</p> <p>FORGERY: <i>Addy v. Sessions</i>, 696 F. App'x 801, 803–04 (9th Cir. 2017) (unpublished) (noting that § 470 is “categorically a crime relating to forgery” and therefore an aggravated felony) (internal quotation omitted).</p>	<p><i>United States v. Farid</i>, 427 F. App'x 603, 604 (9th Cir. 2011) (unpublished) (denaturalization case) (noting that § 470(a) is a CIMT because it requires an intent to defraud).</p>		
Relevant to Analysis:			
<p>WOBBLER: YES.</p> <p>The maximum possible sentence for a “wobbler” offense depends on if it is classified as a misdemeanor or a felony. <i>See Garcia-Lopez v. Ashcroft</i>, 334 F.3d 840, 844 (9th Cir. 2003), <i>overruled on other grounds by Ceron v. Holder</i>, 747 F.3d 773, 777 (9th Cir. 2014) (en banc). A “wobbler” is “presumptively a felony and remains a felony except when the discretion is actually exercised to make the crime a misdemeanor.” <i>See Arellano Hernandez v. Lynch</i>, 831 F.3d 1127, 1132 (9th Cir. 2016) (quoting <i>Ewing v. California</i>, 538 U.S. 11, 16 (2003)). <u>Be aware</u> of CPC § 18.5 if the respondent was convicted of a misdemeanor.</p>	<p>Be aware of Cal. Penal Code § 18.5: CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> <i>See Matter of Velasquez-Rios</i>, 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</p> <p>Note: This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT, nor whether the offense meets any minimum sentence requirement.</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.</p>	

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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?
CPC § 472: Forgery or Counterfeiting of Seals Every person who, with intent to defraud another, forges, or counterfeits the seal of this State, the seal of any public officer authorized by law, the seal of any Court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this State, or of any other State, Government, or country, or who falsely makes, forges, or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeited seal or impression thereof, knowing it to be counterfeited, and willfully conceals the same, is guilty of forgery.			
Aggravated Felony: Fraud Offense 237(a)(2)(A)(iii)/ 101(a)(43)(M)	CPC § 473: 1 or 3 years (<i>see</i> CPC § 1170(h)) WOBBLER? YES The maximum possible sentence for a “wobbler” offense depends on if it is classified as a misdemeanor or a felony. <i>See Garcia-Lopez v. Ashcroft</i> , 334 F.3d 840, 844 (9th Cir. 2003), <i>overruled on other grounds by Ceron v. Holder</i> , 747 F.3d 773, 777 (9th Cir. 2014) (en banc). A “wobbler” is “presumptively a felony and remains a felony except when the discretion is actually exercised to make the crime a misdemeanor.” <i>See Arellano Hernandez v. Lynch</i> , 831 F.3d 1127, 1132 (9th Cir. 2016) (quoting <i>Ewing v. California</i> , 538 U.S. 11, 16 (2003)). <u>Be aware</u> of CPC § 18.5 if the respondent was convicted of a misdemeanor.	FRAUD: IT DEPENDS. APPLY CIRCUMSTANCE-SPECIFIC APPROACH. <u>Categorical Match?</u> Yes, <u>but</u> only if the loss to the victim(s) exceeds \$10,000. Apply circumstance-specific approach. A violation of § 472 is <u>categorically</u> an offense involving fraud because conviction requires intent to defraud. <i>See</i> INA § 101(a)(43)(M); <i>Kharana v. Gonzales</i> , 487 F.3d 1280, 1280 (9th Cir. 2007), <i>recognized as overruled on other grounds by Kawashima v. Mukasey</i> , 530 F.3d 1111, 1116 (9th Cir. 2008) (The definition of the generic “fraud offense” for the purposes of an aggravated felony under INA § 101(a)(43)(M) is “[1] the offense ‘involves fraud or deceit,’ and [2] the loss to the victim or victims exceeds \$10,000”); <i>Matter of Babaisakov</i> , 24 I&N Dec. 306 (BIA 2007) (same). In <i>Nijhawan v. Holder</i> , 557 U.S. 29 (2009), the Supreme Court stated that the “fraud and deceit provision” requires a “circumstance-specific” and not a “categorical” interpretation, to determine whether the loss to the victim exceeds \$10,000. <i>See id.</i> at 36, 38–40. Thus, while a violation of § 472 requires an intent to defraud, it is not a “categorical match” if the loss to the victim does not exceed \$10,000. <i>See also Matter of Babaisakov</i> , 24 I&N Dec. at 322 (holding that “[INA § 101(a)(43)(M)(i)] demands two types of determinations. The first is a categorical inquiry into a conviction under a criminal statute with an element of fraud or deceit. The second is an ordinary evidentiary inquiry into whether the loss associated with the fraudulent conduct encompassed by the conviction exceeds \$10,000.” When determining whether the loss to the victim exceeds \$10,000, the determination “may be proved by evidence outside the record of conviction.”).	CIMT: YES. <u>Categorical Match?</u> Yes <i>See Matter of Cortez Canales</i> , 25 I&N Dec. 301 (BIA 2010), <i>abrogated on other grounds by Lozano-Arredondo v. Sessions</i> , 866 F.3d 1082 (9th Cir. 2017) (stating an offense is a CIMT if the statute has “intent to defraud” as an element); <i>see also McNaughton v. INS</i> , 612 F.2d 457, 459 (9th Cir. 1980) (stating that “[a] crime having as an element the intent to defraud clearly is one involving moral turpitude”). Be aware of Cal. Penal Code § 18.5: CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> <i>See Matter of Velasquez-Rios</i> , 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart. Note: This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT, nor whether the offense meets any minimum sentence requirement.

CALIFORNIA CRIME CHART: PERJURY, FORGERY, FRAUD

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		<p><u>FORGERY: YES.</u></p> <p><u>Categorical Match?</u> Yes</p> <p><i>Morales-Alegria v. Gonzales</i>, 449 F.3d 1051, 1056–58 (9th Cir. 2006) (holding § 476 is a forgery offense because the <i>mens rea</i> requirement of intent to defraud encompasses knowledge of the fictitious nature of the instrument); <i>see also Vizcarra-Ayala v. Mukasey</i>, 514 F.3d 870, 874 (9th Cir. 2008) (explaining that the generic crime of forgery requires “(1) a false making of some instrument in writing; (2) a fraudulent intent; [and] (3) an instrument apparently capable of effecting a fraud.”)..</p>	
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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?
CPC § 475: Forgery; Possession or Receipt of Items (a) Every person who possesses or receives, with the intent to pass or facilitate the passage or utterance of any forged, altered, or counterfeit items, or completed items contained in subdivision (d) of Section 470 with intent to defraud, knowing the same to be forged, altered, or counterfeit, is guilty of forgery. (b) Every person who possesses any blank or unfinished check, note, bank bill, money order, or traveler's check, whether real or fictitious, with the intention of completing the same or the intention of facilitating the completion of the same, in order to defraud any person, is guilty of forgery. (c) Every person who possesses any completed check, money order, traveler's check, warrant or county order, whether real or fictitious, with the intent to utter or pass or facilitate the utterance or passage of the same, in order to defraud any person, is guilty of forgery.			
Aggravated Felony: Fraud Offense 237(a)(2)(A)(iii)/ 101(a)(43)(M) Aggravated Felony: Forgery Offense 237(a)(2)(A)(iii)/ 101(a)(43)(R) CIMT 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)	CPC § 473: 1 or 3 years (see CPC § 1170(h)) WOBBLER? YES The maximum possible sentence for a “wobbler” offense depends on if it is classified as a misdemeanor or a felony. See <i>Garcia-Lopez v. Ashcroft</i> , 334 F.3d 840, 844 (9th Cir. 2003), <i>overruled on other grounds by Ceron v. Holder</i> , 747 F.3d 773, 777 (9th Cir. 2014) (en banc). A “wobbler” is “presumptively a felony and remains a felony except when the discretion is actually exercised to make the crime a misdemeanor.” See <i>Arellano Hernandez v. Lynch</i> , 831 F.3d 1127, 1132 (9th Cir. 2016) (quoting <i>Ewing v. California</i> , 538 U.S. 11, 16 (2003)). <u>Be aware of CPC § 18.5 if the</u>	FRAUD: IT DEPENDS. APPLY CIRCUMSTANCE-SPECIFIC APPROACH. <u>Categorical Match?</u> Yes, <u>but</u> only if the loss to the victim(s) exceeds \$10,000. Apply circumstance-specific approach. A violation of § 475 is <u>categorically</u> an offense involving fraud because conviction requires intent to defraud. See INA § 101(a)(43)(M); <i>Kharana v. Gonzales</i> , 487 F.3d 1280, 1280 (9th Cir. 2007), <i>recognized as overruled on other grounds by Kawashima v. Mukasey</i> , 530 F.3d 1111, 1116 (9th Cir. 2008) (The definition of the generic “fraud offense” for the purposes of an aggravated felony under INA § 101(a)(43)(M) is “[1] the offense ‘involves fraud or deceit,’ and [2] the loss to the victim or victims exceeds \$10,000”); <i>Matter of Babaisakov</i> , 24 I&N Dec. 306 (BIA 2007) (same). In <i>Nijhawan v. Holder</i> , 557 U.S. 29 (2009), the Supreme Court stated that the “fraud and deceit provision” requires a “circumstance-specific” and not a “categorical” interpretation, to determine whether the loss to the victim exceeds \$10,000. See <i>id.</i> , at 36, 38–40. Thus, while a violation of § 475 requires an intent to defraud, it is not a “categorical match” if the loss to the victim does not exceed \$10,000. See also <i>Matter of Babaisakov</i> , 24 I&N Dec. at 322 (holding that “[INA § 101(a)(43)(M)(i)] demands two types of determinations. The first is a categorical inquiry into a conviction under a criminal statute with an element of fraud or deceit. The second is an ordinary evidentiary inquiry into whether the loss associated with the fraudulent conduct encompassed by the conviction exceeds \$10,000.” When determining whether the loss to the victim exceeds \$10,000, the determination “may be proved by evidence outside the record of conviction.”).	CIMT: YES. <u>Categorical Match?</u> Yes <i>See Matter of Velasquez-Rios</i> , 27 I&N Dec. 470, 471–72 (BIA 2018) (affirming summarily that § 475(a) is “clearly” a CIMT because it involves the “specific intent to defraud another”); <i>see also Matter of Cortez Canales</i> , 25 I&N Dec. 301 (BIA 2010), <i>abrogated on other grounds by Lozano-Arredondo v. Sessions</i> , 866 F.3d 1082 (9th Cir. 2017) (stating an offense is a CIMT if the statute has “intent to defraud” as an element); <i>see also McNaughton v. INS</i> , 612 F.2d 457, 459 (9th Cir. 1980) (stating that “[a] crime having as an element the intent to defraud clearly is one involving moral turpitude”). Be aware of Cal. Penal Code § 18.5: CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> See <i>Matter of Velasquez-Rios</i> , 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart. Note: This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT, nor whether the offense meets any minimum sentence requirement.

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	<p>respondent was convicted of a misdemeanor.</p>	<p><u>FORGERY:</u></p> <p>475(a): YES.</p> <p><u>Categorical Match?</u> Yes</p> <p><i>See Vizcarra-Ayala v. Mukasey</i>, 514 F.3d 870, 874 (9th Cir. 2008) (explaining that forgery requires the (1) a false making of some instrument in writing; (2) a fraudulent intent; and (3) an instrument apparently capable of effecting a fraud); <i>see also Morales-Alegria v. Gonzales</i>, 449 F.3d 1051, 1056, 1058 (9th Cir. 2006) (same, as well as knowledge of the falsity of the document).</p> <p>(b) (5)</p> <p>475(c): NO.</p> <p><u>Categorical Match?</u> No</p> <p><i>Vizcarra-Ayala v. Mukasey</i>, 514 F.3d 870, 876 (9th Cir. 2008) (stating § 475(c) encompasses “possession or use of a <i>genuine</i> instrument with intent to defraud but not to forge,” and is therefore overbroad since it encompasses crimes that do not include falsification of a document) (emphasis added); <i>see also Morales-Alegria v. Gonzales</i>, 449 F.3d 1051,</p>	
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1056, 1058 (9th Cir. 2006) (explaining that forgery requires the (1) a false making of some instrument in writing; (2) a fraudulent intent; and (3) an instrument apparently capable of effecting a fraud, as well as knowledge of the falsity of the document).

(b) (5)

[REDACTED]

[REDACTED]

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Cal. Penal Code § 476 (Forgery; Fictitious or Altered Bills, Notes, or Checks): Every person who makes, passes, utters, or publishes, with intent to defraud any other person, or who, with the like intent, attempts to pass, utter, or publish, or who has in his or her possession, with like intent to utter, pass, or publish, any fictitious or altered bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of any real or fictitious financial institution as defined in Section 186.9 is guilty of forgery. (2018).

Maximum Sentence: 3 years imprisonment in state prison pursuant to CPC § 1170(h), or 1 year in county jail pursuant to CPC § 473.

Aggravated Felony?	Crime Involving Moral Turpitude (CMT)?	Particularly Serious Crime (PSC)?	Other Inadmissibility or Removability Grounds? i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
Fraud: § 237(a)(2)(A)(iii)/ § 101(a)(43)(M) Forgery: § 237(a)(2)(A)(iii)/ § 101(a)(43)(R)	§ 212(a)(2)(A)(i)(I); § 237(a)(2)(A)(i)	§ 208(b)(2)(A)(ii)/ § 241(b)(3)(B)(ii)	
<p>FRAUD: IT DEPENDS. APPLY CIRCUMSTANCE-SPECIFIC APPROACH.</p> <p><u>Categorical Match?</u> Yes, <u>but</u> only if the loss to the victim(s) exceeds \$10,000. Apply circumstance-specific approach.</p> <p>A violation of § 476 is <u>categorically</u> an offense involving fraud because conviction requires intent to defraud. <i>See</i> INA § 101(a)(43)(M); <i>Kharana v. Gonzales</i>, 487 F.3d 1280, 1280 (9th Cir. 2007), <i>recognized as overruled on other grounds by Kawashima v. Mukasey</i>, 530 F.3d 1111, 1116 (9th Cir. 2008) (The definition of the generic “fraud offense” for the purposes of an aggravated felony under INA § 101(a)(43)(M) is “[1] the offense ‘involves fraud or deceit,’ and [2] the loss to the victim or victims exceeds \$10,000”); <i>Matter of Babaisakov</i>, 24 I&N Dec. 306 (BIA 2007) (same).</p> <p>In <i>Nijhawan v. Holder</i>, 557 U.S. 29 (2009), the Supreme Court stated that the “fraud and deceit provision” requires a “circumstance-</p>	<p>CMT: YES.</p> <p><u>Categorical Match?</u> Yes</p> <p>A violation of § 476 is <u>categorically</u> a CMT because an element of the statute is intent to defraud. <i>See Matter of Cortez Canales</i>, 25 I&N Dec. 301 (BIA 2010), <i>abrogated on other grounds by Lozano-Arredondo v. Sessions</i>, 866 F.3d 1082 (9th Cir. 2017) (stating an offense is a CMT if the statute has “intent to defraud” as an element); <i>see also McNaughton v. INS</i>, 612 F.2d 457, 459 (9th Cir. 1980) (stating that “[a] crime having as an element the intent to defraud clearly is one involving moral turpitude”).</p>	<p>PSC:</p> <p>For purposes of asylum: Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”).</p> <p>For purposes of withholding: Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been</p>	

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<p>specific” and not a “categorical” interpretation, to determine whether the loss to the victim exceeds \$10,000. <i>See id.</i> at 36, 38–40. Thus, while a violation of § 476 requires an intent to defraud, it is not a “categorical match” if the loss to the victim does not exceed \$10,000. <i>See also Matter of Babaisakov</i>, 24 I&N Dec. at 322 (holding that “[INA § 101(a)(43)(M)(i)] demands two types of determinations. The first is a categorical inquiry into a conviction under a criminal statute with an element of fraud or deceit. The second is an ordinary evidentiary inquiry into whether the loss associated with the fraudulent conduct encompassed by the conviction exceeds \$10,000.” When determining whether the loss to the victim exceeds \$10,000, the determination “may be proved by evidence outside the record of conviction.”).</p> <p><u>FORGERY: YES.</u></p> <p><u>Categorical Match?</u> Yes</p> <p>A violation of § 476 is <u>categorically</u> an offense involving forgery because conviction requires fraudulent intent. <i>See Morales-Alegria v. Gonzales</i>, 449 F.3d 1051, 1056–58 (9th Cir. 2006) (holding § 476 is a forgery offense because the <i>mens rea</i> requirement of intent to defraud encompasses knowledge of the fictitious nature of the instrument); <i>see also Vizcarra-Ayala v. Mukasey</i>, 514 F.3d 870, 874 (9th Cir. 2008) (explaining that the generic crime of forgery requires “(1) a false making of some instrument in writing; (2) a fraudulent intent; [and] (3) an instrument apparently capable of effecting a fraud.”).</p>		<p>convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p>Under <i>Matter of Frentescu</i>, 18 I&N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</p>	
Unpublished Cases:			
<p><i>Miranda Roman v. Sessions</i>, 741 F. App’x 402, 404 (9th Cir. 2018) (unpublished) (“§ 476 is a categorical forgery offense”).</p> <p><i>Arroyo v. Holder</i>, 550 F. App’x 408 (9th Cir. 2013) (holding that a conviction under § 476 is categorically a forgery offense).</p>	<p><i>Mazarei v. Sessions</i>, 734 F. App’x 510, 511 (9th Cir. 2018) (unpublished) (referencing without reviewing BIA’s denial of cancellation of removal due to conviction under § 476, “which constitutes a crime involving moral turpitude under 8 U.S.C. § 1227(a)(2)”).</p>		
Relevant to Analysis:			
<p><u>WOBBLER: YES.</u></p> <p>The maximum possible sentence for a “wobbler” offense depends on</p>	<p>Be aware of Cal. Penal Code § 18.5: CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements</p>	

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if it is classified as a misdemeanor or a felony. <i>See Garcia-Lopez v. Ashcroft</i> , 334 F.3d 840, 844 (9th Cir. 2003), <i>overruled on other grounds by Ceron v. Holder</i> , 747 F.3d 773, 777 (9th Cir. 2014) (en banc). A “wobbler” is “presumptively a felony and remains a felony except when the discretion is actually exercised to make the crime a misdemeanor.” <i>See Arellano Hernandez v. Lynch</i> , 831 F.3d 1127, 1132 (9th Cir. 2016) (quoting <i>Ewing v. California</i> , 538 U.S. 11, 16 (2003)). <u>Be aware</u> of CPC § 18.5 if the respondent was convicted of a misdemeanor.	365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> <i>See Matter of Velasquez-Rios</i> , 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart. Note: This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT, nor whether the offense meets any minimum sentence requirement.	when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.	
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CALIFORNIA CRIME CHART: PERJURY, FORGERY, FRAUD
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Cal. Penal Code § 476a(a) (Insufficient Funds Checks): Any person who, for himself or herself, as the agent or representative of another, or as an officer of a corporation, willfully, with intent to defraud, makes or draws or utters or delivers a check, draft, or order upon a bank or depository, a person, a firm, or a corporation, for the payment of money, knowing at the time of that making, drawing, uttering, or delivering that the maker or drawer or the corporation has not sufficient funds in, or credit with the bank or depository, person, firm, or corporation, for the payment of that check, draft, or order and all other checks, drafts, or orders upon funds then outstanding, in full upon its presentation, although no express representation is made with reference thereto, is punishable by imprisonment in a county jail for not more than one year, or pursuant to subdivision (h) of Section 1170. (2018).			
Maximum Sentence: 3 years imprisonment in state prison pursuant to CPC § 1170(h), or 1 year in county jail pursuant to CPC § 476a(a).			
Aggravated Felony?	Crime Involving Moral Turpitude (CIMT)?	Particularly Serious Crime (PSC)?	Other Inadmissibility or Removability Grounds? i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
Fraud: § 237(a)(2)(A)(iii)/ § 101(a)(43)(M)	§ 212(a)(2)(A)(i)(I); § 237(a)(2)(A)(i)	§ 208(b)(2)(A)(ii)/ § 241(b)(3)(B)(ii)	
FRAUD: IT DEPENDS. APPLY CIRCUMSTANCE-SPECIFIC APPROACH. <u>Categorical Match?</u> Yes, <u>but</u> only if the loss to the victim(s) exceeds \$10,000. Apply circumstance-specific approach. A violation of § 476a(a) is <u>categorically</u> an offense involving fraud because conviction requires intent to defraud. <i>See</i> INA § 101(a)(43)(M); <i>Kharana v. Gonzales</i> , 487 F.3d 1280, 1280 (9th Cir. 2007), <i>recognized as overruled on other grounds by Kawashima v. Mukasey</i> , 530 F.3d 1111, 1116 (9th Cir. 2008) (The definition of the generic “fraud offense” for the purposes of an aggravated felony under INA § 101(a)(43)(M) is “[1] the offense ‘involves fraud or deceit,’ and [2] the loss to the victim or victims exceeds \$10,000”); <i>Matter of Babaisakov</i> , 24 I&N Dec. 306 (BIA 2007) (same).	CIMT: YES. <u>Categorical Match?</u> Yes <i>Planes v. Holder</i> , 652 F.3d 991, 997–98 (9th Cir. 2011) (holding CPC § 476a(a) is categorically a CIMT); <i>see also Burr v. INS</i> , 350 F.2d 87, 91–92 (9th Cir. 1965) (holding that writing insufficient funds checks in violation of CPC § 476a(a) is a CIMT). <i>See also Matter of Cortez Canales</i> , 25 I&N Dec. 301 (BIA 2010), <i>abrogated on other grounds by Lozano-Arredondo v. Sessions</i> , 866 F.3d 1082 (9th Cir. 2017) (stating an offense is a CIMT if the statute has “intent to defraud” as an element); <i>McNaughton v. INS</i> , 612 F.2d 457, 459 (9th Cir. 1980) (stating that “[a] crime having as an element the intent to defraud clearly is one involving moral	PSC: For purposes of asylum: Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”). For purposes of withholding: Per se PSC	

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<p>In <i>Nijhawan v. Holder</i>, 557 U.S. 29 (2009), the Supreme Court stated that the “fraud and deceit provision” requires a “circumstance-specific” and not a “categorical” interpretation, to determine whether the loss to the victim exceeds \$10,000. <i>See id.</i> at 36, 38–40. Thus, while a violation of § 476a(a) requires an intent to defraud, it is not a “categorical match” if the loss to the victim does not exceed \$10,000. <i>See also Matter of Babaisakov</i>, 24 I&N Dec. at 322 (holding that “[INA § 101(a)(43)(M)(i)] demands two types of determinations. The first is a categorical inquiry into a conviction under a criminal statute with an element of fraud or deceit. The second is an ordinary evidentiary inquiry into whether the loss associated with the fraudulent conduct encompassed by the conviction exceeds \$10,000.” When determining whether the loss to the victim exceeds \$10,000, the determination “may be proved by evidence outside the record of conviction.”).</p>	<p>turpitude.”).</p>	<p>if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p>Under <i>Matter of Frentescu</i>, 18 I&N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</p>	
Unpublished Cases:			
	<p><i>United States v. Farid</i>, 427 F. App’x 603, 604 (9th Cir. 2011) (unpublished) (denaturalization case) (noting that § 476(a) is a CIMT because it requires an intent to defraud).</p>		
Relevant to Analysis:			
<p><u>WOBBLER: YES.</u></p> <p>The maximum possible sentence for a “wobbler” offense depends on if it is classified as a misdemeanor or a felony. <i>See Garcia-Lopez v. Ashcroft</i>, 334 F.3d 840, 844 (9th Cir. 2003), <i>overruled on other grounds by Ceron v. Holder</i>, 747 F.3d 773, 777 (9th Cir. 2014) (en banc). A “wobbler” is “presumptively a felony and remains a felony except when the discretion is actually exercised to make the crime a misdemeanor.” <i>See Arellano Hernandez v. Lynch</i>, 831 F.3d 1127, 1132 (9th Cir. 2016) (quoting <i>Ewing v. California</i>, 538 U.S. 11, 16 (2003)). Be aware of CPC § 18.5 if the respondent was convicted of a</p>	<p>Be aware of Cal. Penal Code § 18.5: CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> <i>See Matter of Velasquez-Rios</i>, 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</p> <p>Note: This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.</p>	

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<p>misdemeanor.</p> <p>“The California Legislature has been explicit that when it intends fraud to be an element of an offense it includes it in the statute. <i>See, e.g.</i>, Cal.Penal Code § 470(d) (forgery includes “with intent to defraud” as an element); Cal. Penal Code § 476a(a) (check kiting) (same); Cal. Penal Code § 548(a) (insurance fraud) (same)</p> <p>“Obviously, if the Legislature meant for [the statute in question] to require an intent to defraud, it knew how to so provide.” <i>Tijani v. Holder</i>, 628 F.3d 1071, 1084 n.7 (9th Cir. 2010) (Tashima, J., concurring in part and dissenting in part).</p>	<p>CIMT, nor whether the offense meets any minimum sentence requirement.</p>		
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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?
CPC § 532: False Pretenses Every person who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor, or property, whether real or personal, or who causes or procures others to report falsely of his or her wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently gets possession of money or property, or obtains the labor or service of another, is punishable in the same manner and to the same extent as for larceny of the money or property so obtained.			
Aggravated Felony: Fraud Offense 237(a)(2)(A)(iii)/ 101(a)(43)(M) CIMT 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)	CPC § 532: 6 months up to 3 years , depending on how much money or property was taken (<i>see</i> CPC § 490 (petty theft); § 489(a) (grand theft)) WOBBLER? YES The maximum possible sentence for a “wobbler” offense depends on if it is classified as a misdemeanor or a felony. <i>See Garcia-Lopez v. Ashcroft</i> , 334 F.3d 840, 844 (9th Cir. 2003), <i>overruled on other grounds by Ceron v. Holder</i> , 747 F.3d 773, 777 (9th Cir. 2014) (en banc). A “wobbler” is “presumptively a felony and remains a felony except when the discretion is actually exercised to make the crime a misdemeanor.” <i>See Arellano Hernandez v. Lynch</i> , 831 F.3d 1127, 1132 (9th Cir. 2016) (quoting <i>Ewing v. California</i> , 538 U.S. 11,	H. <u>Categorical Match?</u> Yes, <u>but</u> only if the loss to the victim(s) exceeds \$10,000. Apply circumstance-specific approach. <i>Kharana v. Gonzales</i> , 487 F.3d 1280, 1280 (9th Cir 2007), <i>recognized as overruled on other grounds by Kawashima v. Mukasey</i> , 530 F.3d 1111, 1116 (9th Cir. 2008) (finding CPC § 532 to be a categorically fraud offense because it involves fraud or deceit). In <i>Nijhawan v. Holder</i> , 557 U.S. 29 (2009), the Supreme Court stated that the “fraud and deceit provision” requires a “circumstance-specific” and not a “categorical” interpretation, to determine whether the loss to the victim exceeds \$10,000. <i>See id.</i> at 36, 38–40. Thus, while a violation of § 532 requires an intent to defraud, it is not a “categorical match” if the loss to the victim does not exceed \$10,000. <i>See also Matter of Babaisakov</i> , 24 I&N Dec. at 322 (holding that “[INA § 101(a)(43)(M)(i)] demands two types of determinations. The first is a categorical inquiry into a conviction under a criminal statute with an element of fraud or deceit. The second is an ordinary evidentiary inquiry into whether the loss associated with the fraudulent conduct encompassed by the conviction exceeds \$10,000.” When determining whether the loss to the victim exceeds \$10,000, the determination “may be proved by evidence outside the record of conviction.”). THEFT: NO. <u>Categorical Match?</u> No <i>Carrillo-Jaime v. Holder</i> , 572 F.3d 747, 752 (9th Cir. 2009), <i>abrogated on other grounds by Lopez-Valencia v. Lynch</i> , 798 F.3d 863 (9th Cir. 2015) (holding that false pretenses is not a theft offense because it does not require that property be taken without consent and the generic crime of theft requires “[1] a taking of <u>property</u> or an exercise of control over property [2] <u>without consent</u> [3] with the criminal intent to deprive the owner of rights and benefits	CIMT: YES. <u>Categorical Match?</u> Yes <i>Kharana v. Gonzales</i> , 487 F.3d 1280, 1280 (9th Cir 2007), <i>recognized as overruled on other grounds by Kawashima v. Mukasey</i> , 530 F.3d 1111, 1116 (9th Cir. 2008) (finding CPC § 532 to be a categorically fraud offense because it involves fraud or deceit); <i>see also Matter of Cortez Canales</i> , 25 I&N Dec. 301 (BIA 2010), <i>abrogated on other grounds by Lozano-Arredondo v. Sessions</i> , 866 F.3d 1082 (9th Cir. 2017) (stating an offense is a CIMT if the statute has “intent to defraud” as an element); <i>see also McNaughton v. INS</i> , 612 F.2d 457, 459 (9th Cir. 1980) (stating that “[a] crime having as an element the intent to defraud clearly is one involving moral turpitude.”). Be aware of Cal. Penal Code § 18.5: CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> <i>See Matter of Velasquez-Rios</i> , 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart. Note: This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT, nor whether the offense meets any minimum sentence requirement.

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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?
	16 (2003)). <u>Be aware</u> of CPC § 18.5 if the respondent was convicted of a misdemeanor.	of ownership, even if such deprivation is less than total or permanent.”); <i>see also Matter of Garcia-Madruga</i> , 24 I&N Dec. 436, 440–41 (BIA 2008) (reaffirming that the INA requires the stolen property be obtained “without consent”).	

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Cal. Penal Code § 532a(1) (False Financial Statement): Any person who shall knowingly make or cause to be made, either directly or indirectly or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon, respecting the financial condition, or means or ability to pay, of himself or herself, or any other person, firm or corporation, in whom he or she is interested, or for whom he or she is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the execution of a contract of guaranty or suretyship, the discount of an account receivable, or the making, acceptance, discount, sale or endorsement of a bill of exchange, or promissory note, for the benefit of either himself or herself or of that person, firm or corporation shall be guilty of a public offense. (2018).

Maximum Sentence: 1 to 3 years, if felony (used fictitious name, social security number, false representation); 6 months, if misdemeanor. CPC § 532a(4).

Aggravated Felony?	Crime Involving Moral Turpitude (CIMT)?	Particularly Serious Crime (PSC)?	Other Inadmissibility or Removability Grounds? i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
Fraud: § 237(a)(2)(A)(iii)/ § 101(a)(43)(M)	§ 212(a)(2)(A)(i)(I); § 237(a)(2)(A)(i)	§ 208(b)(2)(A)(ii)/ § 241(b)(3)(B)(ii)	
<p>FRAUD: IT DEPENDS. APPLY CIRCUMSTANCE-SPECIFIC APPROACH.</p> <p><u>Categorical Match?</u> Yes, <u>but</u> only if the loss to the victim(s) exceeds \$10,000. Apply circumstance-specific approach.</p> <p><i>Tijani v. Holder</i>, 628 F.3d 1071, 1075–76 (9th Cir. 2010) (finding that intent to defraud is implicit in § 532a(1)); <i>see also</i> INA § 101(a)(43)(M); <i>Kharana v. Gonzales</i>, 487 F.3d 1280, 1280 (9th Cir. 2007), <i>recognized as overruled on other grounds by Kawashima v. Mukasey</i>, 530 F.3d 1111, 1116 (9th Cir. 2008) (The definition of the generic “fraud offense” for the purposes of an aggravated felony under INA § 101(a)(43)(M) is “[1] the offense ‘involves fraud or deceit,’ and [2] the loss to the victim or victims exceeds \$10,000”);</p>	<p>CIMT: YES.</p> <p><u>Categorical Match?</u> Yes</p> <p><i>See Tijani v. Holder</i>, 628 F.3d 1071, 1078 (9th Cir. 2010), (distinguishing § 530.5(a), which does not have an element of fraud, from § 532a(1), which it found to have such an element); <i>see also Matter of Cortez Canales</i>, 25 I&N Dec. 301 (BIA 2010), <i>abrogated on other grounds by Lozano-Arredondo v. Sessions</i>, 866 F.3d 1082 (9th Cir. 2017) (stating an offense is a CIMT if the statute has “intent to defraud” as an element); <i>McNaughton v. INS</i>, 612 F.2d 457, 459 (9th Cir. 1980) (stating that “[a] crime having as an element the intent to defraud clearly is one involving moral turpitude.”).</p>	<p>PSC:</p> <p>For purposes of asylum: Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”).</p> <p>For purposes of</p>	

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<p><i>Matter of Babaisakov</i>, 24 I&N Dec. 306 (BIA 2007) (same).</p> <p>In <i>Nijhawan v. Holder</i>, 557 U.S. 29 (2009), the Supreme Court stated that the “fraud and deceit provision” requires a “circumstance-specific” and not a “categorical” interpretation, to determine whether the loss to the victim exceeds \$10,000. <i>See id.</i> at 36, 38–40. Thus, while a violation of § 532a(1) requires an intent to defraud, it is not a “categorical match” if the loss to the victim does not exceed \$10,000. <i>See also Matter of Babaisakov</i>, 24 I&N Dec. at 322 (holding that “[INA § 101(a)(43)(M)(i)] demands two types of determinations. The first is a categorical inquiry into a conviction under a criminal statute with an element of fraud or deceit. The second is an ordinary evidentiary inquiry into whether the loss associated with the fraudulent conduct encompassed by the conviction exceeds \$10,000.” When determining whether the loss to the victim exceeds \$10,000, the determination “may be proved by evidence outside the record of conviction.”).</p>		<p>withholding: Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p>Under <i>Matter of Frentescu</i>, 18 I&N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</p>	
Unpublished Cases:			
Relevant to Analysis:			
<p><u>WOBBLER: YES.</u></p> <p>The maximum possible sentence for a “wobbler” offense depends on if it is classified as a misdemeanor or a felony. <i>See Garcia-Lopez v. Ashcroft</i>, 334 F.3d 840, 844 (9th Cir. 2003), <i>overruled on other grounds by Ceron v. Holder</i>, 747 F.3d 773, 777 (9th Cir. 2014) (en banc). A “wobbler” is “presumptively a felony and remains a felony except when the discretion is actually exercised to make the crime a misdemeanor.” <i>See Arellano Hernandez v. Lynch</i>, 831 F.3d 1127, 1132 (9th Cir. 2016) (quoting <i>Ewing v. California</i>, 538 U.S. 11, 16 (2003)). Be aware of CPC § 18.5 if the respondent was convicted of a misdemeanor.</p>	<p>Be aware of Cal. Penal Code § 18.5: CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> <i>See Matter of Velasquez-Rios</i>, 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</p> <p>Note: This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT, nor whether the offense meets any minimum sentence</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.</p>	

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	requirement.		
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Cal. Welfare & Instit. Code § 10980(a), (b), (c) (Welfare Fraud): (a) Any person who, willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact in order to obtain aid under the provisions of this division or who, knowing he or she is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he or she is not entitled, or to receive a larger amount than that to which he or she is legally entitled, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period of not more than six months, by a fine of not more than five hundred dollars (\$500), or by both imprisonment and fine.

(b) Any person who knowingly makes more than one application for aid under the provisions of this division with the intent of establishing multiple entitlements for any person for the same period or who makes an application for that aid for a fictitious or nonexistent person or by claiming a false identity for any person is guilty of a felony, punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars (\$5,000), or by both that imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both imprisonment and fine.

(c) Whenever any person has, willfully and knowingly, with the intent to deceive, by means of false statement or representation, or by failing to disclose a material fact, or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining this aid shall be punished as follows: (1) If the total amount of the aid obtained or retained is nine hundred fifty dollars (\$950) or less, by imprisonment in the county jail for a period of not more than six months, by a fine of not more than five hundred dollars (\$500), or by both imprisonment and fine. (2) If the total amount of the aid obtained or retained is more than nine hundred fifty dollars (\$950), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars (\$5,000), or by both that imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both imprisonment and fine. (2018).

Maximum Sentence: 1 to 3 years, if felony (used fictitious name, social security number, false representation). *See* CPC § 10980(b), (c); *see also* CPC § 1170(h). Six months, if misdemeanor. *See* CPC § 10980(a).

Aggravated Felony?	Crime Involving Moral Turpitude (CMT)?	Particularly Serious Crime (PSC)?	Other Inadmissibility or Removability Grounds? i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
Fraud: § 237(a)(2)(A)(iii)/ § 101(a)(43)(M) Theft: § 237(a)(2)(A)(iii)/ § 101(a)(43)(G)	§ 212(a)(2)(A)(i)(I); § 237(a)(2)(A)(i)	§ 208(b)(2)(A)(ii)/ § 241(b)(3)(B)(ii)	
FRAUD: IT DEPENDS. APPLY CIRCUMSTANCE-SPECIFIC APPROACH.	CMT: YES.	PSC: For purposes of asylum:	

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<p><u>Categorical Match?</u> Yes, <u>but</u> only if the loss to the victim(s) exceeds \$10,000. Apply circumstance-specific approach.</p> <p><i>See Ferreira v. Ashcroft</i>, 390 F.3d 1091, 1096–97 (9th Cir. 2004), <i>recognized as overruled on other grounds by Kawashima v. Mukasey</i>, 530 F.3d 1111, 1116 (9th Cir. 2008) (explaining that “intent to defraud is an ingredient of a violation of” § 10980(c)).</p> <p><i>See also</i> INA § 101(a)(43)(M); <i>Kharana v. Gonzales</i>, 487 F.3d 1280, 1280 (9th Cir. 2007), <i>recognized as overruled on other grounds by Kawashima v. Mukasey</i>, 530 F.3d 1111, 1116 (9th Cir. 2008) (The definition of the generic “fraud offense” for the purposes of an aggravated felony under INA § 101(a)(43)(M) is “[1] the offense ‘involves fraud or deceit,’ and [2] the loss to the victim or victims exceeds \$10,000”); <i>Matter of Babaisakov</i>, 24 I&N Dec. 306 (BIA 2007) (same).</p> <p>In <i>Nijhawan v. Holder</i>, 557 U.S. 29 (2009), the Supreme Court stated that the “fraud and deceit provision” requires a “circumstance-specific” and not a “categorical” interpretation, to determine whether the loss to the victim exceeds \$10,000. <i>See id.</i> at 36, 38–40. Thus, while a violation of § 10980 requires an intent to defraud, it is not a “categorical match” if the loss to the victim does not exceed \$10,000. <i>See also Matter of Babaisakov</i>, 24 I&N Dec. at 322 (holding that “[INA § 101(a)(43)(M)(i)] demands two types of determinations. The first is a categorical inquiry into a conviction under a criminal statute with an element of fraud or deceit. The second is an ordinary evidentiary inquiry into whether the loss associated with the fraudulent conduct encompassed by the conviction exceeds \$10,000.” When determining whether the loss to the victim exceeds \$10,000, the determination “may be proved by evidence outside the record of conviction.”).</p> <p><u>THEFT: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</u></p>	<p><u>Categorical Match?</u> Yes</p> <p><i>See Matter of Cortez Canales</i>, 25 I&N Dec. 301 (BIA 2010), <i>abrogated on other grounds by Lozano-Arredondo v. Sessions</i>, 866 F.3d 1082 (9th Cir. 2017) (affirming the IJ’s finding that a violation of § 10980(c) is a CIMT); <i>see also Ferreira v. Ashcroft</i>, 390 F.3d 1091, 1096–97 (9th Cir. 2004), <i>recognized as overruled on other grounds by Kawashima v. Mukasey</i>, 530 F.3d 1111, 1116 (9th Cir. 2008) (explaining that “intent to defraud is an ingredient of a violation of” § 10980(c)); <i>McNaughton v. INS</i>, 612 F.2d 457, 459 (9th Cir. 1980) (stating that “[a] crime having as an element the intent to defraud clearly is one involving moral turpitude.”).</p>	<p>Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”).</p> <p>For purposes of withholding: Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p>Under <i>Matter of Frentescu</i>, 18 I&N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</p>	
Unpublished Cases:			
<p><i>De Gomez v. Holder</i>, 471 F. App’x 591, 592 (9th Cir. 2012) (unpublished) (holding welfare fraud under § 10980 is an aggravated felony involving fraud or deceit if the loss to the victim exceeds \$10,000); <i>Ramirez v. Holder</i>, 469 F. App’x 569, 570 (9th Cir. 2012) (same).</p>	<p><i>Hernandez-Pulido v. Holder</i>, 577 F. App’x 722, 723 (9th Cir. 2014) (unpublished) (holding welfare fraud under California law is a CIMT that renders an applicant ineligible for cancellation of removal); <i>Valenzuela Garcia v. Holder</i>, 469 F. App’x 551, 552 (9th Cir. 2012) (unpublished) (same); <i>Rodriguez v. Ashcroft</i>, 95 F. App’x 208, 211 (9th Cir. 2004) (unpublished) (quoting <i>People v.</i></p>		

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<p><i>In Re Olivia Robles-Leal</i>, 2003 WL 23508554, at *1 (BIA Dec. 29, 2003) (unpublished) (holding “the respondent’s conviction for welfare fraud is an aggravated felony because the loss to the victim was in excess of \$10,000”).</p>	<p><i>Ochoa</i>, 231 Cal. App. 3d 1413, 1420 (Cal. Ct. App. 1991) and finding the statute has a scienter element).</p> <p><i>In Re Maria De La Luz Castillo Gutierrez</i>, 2006 WL 1558782, at *1 (BIA Apr. 28, 2006) (unpublished) (finding “no legal error” in the IJ’s conclusion that a conviction under § 10980(c) constitutes a CIMT).</p>		
Relevant to Analysis:			
<p>(b) (5)</p> <p>WOBBLER: YES.</p> <p>The maximum possible sentence for a “wobbler” offense depends on if it is classified as a misdemeanor or a felony. <i>See Garcia-Lopez v. Ashcroft</i>, 334 F.3d 840, 844 (9th Cir. 2003), <i>overruled on other grounds by Ceron v. Holder</i>, 747 F.3d 773, 777 (9th Cir. 2014) (en banc). A “wobbler” is “presumptively a felony and remains a felony except when the discretion is actually exercised to make the crime a misdemeanor.” <i>See Arellano Hernandez v. Lynch</i>, 831 F.3d 1127, 1132 (9th Cir. 2016) (quoting <i>Ewing v. California</i>, 538 U.S. 11, 16 (2003)). <u>Be aware</u> of CPC § 18.5 if the respondent was convicted of a misdemeanor.</p>	<p>Be aware of Cal. Penal Code § 18.5: CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> <i>See Matter of Velasquez-Rios</i>, 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</p> <p>Note: This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT, nor whether the offense meets any minimum sentence requirement.</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.</p>	

GENERIC OFFENSES

FRAUD OFFENSE

- The definition of the generic “fraud offense” for the purposes of an aggravated felony under INA § 101(a)(43)(M) is “[1] the offense ‘involves fraud or deceit,’ and [2] the loss to the victim or victims exceeds \$10,000.” *Kharana v. Gonzales*, 487 F.3d 1280, 1280 (9th Cir. 2007), *recognized as overruled on other grounds by Kawashima v. Mukasey*, 530 F.3d 1111, 1116 (9th Cir. 2008).

FORGERY OFFENSE

- The definition of the generic “forgery offense” for the purposes of an aggravated felony under INA § 101(a)(43)(M) is (1) a false making of some instrument in writing; (2) a fraudulent intent; and (3) an instrument apparently capable of effecting a fraud. *Morales-Alegria v. Gonzales*, 449 F.3d 1051, 1055 (9th Cir. 2006). Furthermore, crimes of forgery require that one have knowledge of the falsity of the document. *Id.*

THEFT OFFENSE

- The definition of the generic “theft offense” for the purposes of an aggravated felony under INA § 101(a)(43)(G) is “[1] a taking of property or an exercise of control over property [2] without consent [3] with the criminal intent to deprive the owner of rights and benefits of ownership, even if such deprivation is less than total or permanent.” *Carrillo-Jaime v. Holder*, 572 F.3d 747, 750 (9th Cir. 2009), *abrogated on other grounds by Lopez-Valencia v. Lynch*, 798 F.3d 863 (9th Cir. 2015).

CRIME INVOLVING MORAL TURPITUDE

- “A crime having as an element the intent to defraud clearly is one involving moral turpitude.” *McNaughton v. INS*, 612 F.2d 457, 459 (9th Cir. 1980).

Be aware of Cal. Penal Code § 18.5: CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days, for purposes of INA § 237(a)(2)(A)(i)(II), beginning January 1, 2015. Whether this impacts removability and eligibility for relief depends on the date of the respondent’s conviction. In 2018, the Board held that it will not give retroactive effect to CPC § 18.5 because the language of INA § 237(a)(2)(A)(i)(II)—concerning whether an alien has been convicted of a CIMT for which a sentence of one year or longer “may be imposed”—is a backward-looking inquiry into the maximum possible sentence the respondent could have received for his offense at the time of his conviction. *Matter of Velasquez-Rios*, 27 I&N Dec. 470, 472–73 (BIA 2018). For misdemeanors prior to the enactment of CPC §

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18.5, that was 365 days. Thus, if a respondent has a California misdemeanor conviction dated prior to January 1, 2015 that qualifies as a CIMT, that respondent has been convicted of an offense under INA § 237(a)(2)(A)(i)(II). However, a misdemeanor conviction that occurs after January 1, 2015 has a maximum sentence of 364 days, and thus a respondent would not be disqualified under sections of the INA that concern maximum sentences of one year or longer. The Board did not address the retroactive applicability of § 18.5 for any other INA section other than § 237(a)(2)(A)(i)(II). Thus, other subsections that do not use the “for which a sentence of one year or longer may be imposed” language could still be analyzed to determine whether they are backward-looking. For more information, see the Alternative Judgements Chart.